

I do not, however, propose to lay any stress upon this view of the agreement, because in another part of it, the question is submitted, whether the answer does present the case of a *bona fide* purchaser without notice.

One thing is very clear, that the complainants cannot have a decree, unless they can show themselves entitled to an equitable lien upon the lands purchased by the defendant at the sheriff's sale, and which, upon principles of equity, they may set up and maintain against him, and in order to this, they must make out by satisfactory proofs, a certain, distinct and consummated contract between Schley and Dall for such a lien. In the case of *Alexander et al. vs. Ghiselin et al.*, 5 *Gill*, at page 182, the Court of Appeals repeat what had been repeatedly said before, "that courts of equity have properly required that every agreement shall be clearly and explicitly established before they will lend their aid to enforce it."

The agreement in this case, if it can be made out at all, must be found in the correspondence between Schley and Dall, which commenced on the 13th of December, 1844, and terminated on the 13th of December, 1845; and having read that correspondence with great attention, I do not find in it that clear and explicit evidence of a contract for a mortgage, which a court of equity should, in my opinion, set up, to the prejudice of creditors or purchasers. The first letter in the correspondence, is from Mr. Schley to Mr. Dall, under date of the 13th of December, 1844, in which the latter is informed, that the parties interested in the fund then paid in, and thereafter to be received, are anxious that the writer should become trustee for the purpose of investing it, and that he had consented to do so upon certain conditions; and further informing him, (Dall,) that if the arrangement was made, he (Dall) might count on a loan of \$30,000, to be secured as therein mentioned, for five years at least, or perhaps for fifteen, if desired. The arrangement proposed by this letter not having been perfected, and having been subsequently abandoned, it cannot, in my judgment, have any material influence upon the decision of the cause.

The next is from Dall to Schley, dated the 22d of the same